



(301) 495-4615

APPROVED
MINUTES

The Montgomery County Planning Board met in regular session on Thursday, July 7, 2005, at 9:05 a.m., in the Montgomery Regional Office in Silver Spring, Maryland, and adjourned at 11:15 p.m.

Present were Chairman Derick P. Berlage, Vice Chair Wendy C. Perdue, and Commissioners Allison Bryant, John Robinson, and Meredith Wellington.

The Board convened in the third floor conference room to meet in Closed Session. In compliance with Section 10-509(c)(2), State Government Article, Annotated Code of Maryland, the following is a report of the Planning Board's Closed Session:

The Board convened in Closed Session at 9:05 a.m., in the third floor conference room, on motion of Commissioner Robinson, seconded by Commissioner Wellington, with Chairman Berlage, and Commissioners Robinson and Wellington present and voting in favor of the motion, and with Vice Chair Perdue and Commissioner Bryant joining the Closed Session within a few minutes.

The meeting was closed under authority of §10-508(a)(8), State Government Article, Annotated Code of Maryland, to consult with staff, consultants, or other individuals about pending or potential litigation.

Also present for the Closed Session were Associate General Counsels Michele Rosenfeld and Tariq El-Baba of the Legal Department; Department Director Charles Loehr, Deputy Department Director Don Cochran, John Carter and Rose Krasnow of the Department of Park and Planning; Nancy C. Lineman, Chief, Community Outreach and Media Relations; and Joyce Coleman and Ann Daly of the Commissioners' Office.

In Closed Session, the Board received background information and procedural and legal guidance in preparation for the hearing on regular agenda Items 1-3, Clarksburg Town Center alleged violations, enforcement, and plan of compliance matters.

The Closed Session was adjourned at 9:30 a.m., and the Board immediately recessed to convene its regular meeting in the auditorium at 9:40 a.m.

COMMISSIONERS' REPORTS

There were no Commissioners' reports.

DIRECTOR'S REPORTS

There were no Director's reports.

In introductory comments on the Clarksburg Town Center items, Chairman Berlage explained that the Board would first hear Items 1 and 2, respectively, a reconsideration of an alleged failure to comply with building height with respect to Site Plan No. 8-98001 and Site Plan No. 8-02014; and, a threshold hearing on an alleged failure to comply with building setbacks with respect to the same two site plans. The Board would then consider Item 3, consideration of a Plan of Compliance, only if it makes a finding of violations.

The Chairman acknowledged the presence of and welcomed the Honorable Jean B. Cryor, Delegate District 15, Maryland General Assembly, and representatives of the office of District 15 State Senator Robert Garagiola and Montgomery Councilmember Nancy Floreen.

For details of the hearing, please see the verbatim transcript of Items 1, 2, and 3, on file with the minutes in the Montgomery Regional Office in Silver Spring. Also see the attached agenda for a report of Board motions.

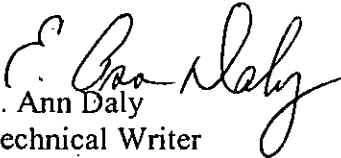
The Board recessed at 1:40 p.m. for lunch and reconvened at 2:30 p.m., in a continuation of the hearing. In this portion of the hearing, the Board heard rebuttal testimony of the parties, then deliberated and found violations on Items 1 and 2 and proceeded to Item 3, consideration of a plan of compliance and sanctions. During the hearing of Item 3, the Board incorporated the previous testimony presented during Items 1 and 2, and heard additional testimony.

The Board recessed the Clarksburg Town Center hearing to July 28, to allow time for collection of additional needed information.

The Board recessed for dinner at 7:20 p.m. and reconvened in the auditorium at 8:20 p.m. with all five commissioners present.

Items 4 through 6, Item 8, and Items 11 through 14 are reported on the attached agenda. Items 7, 9, and 10 were withdrawn from the agenda.

There being no further business, the meeting was adjourned at 11:15 p.m. The next regular meeting of the Planning Board will be held Thursday, July 14, 2005, in the Montgomery Regional Office in Silver Spring, Maryland.


E. Ann Daly
Technical Writer


Ellyn Dye
Technical Writer

Agenda for Montgomery County Planning Board Meeting

Thursday, July 7, 2005, 9:00 A.M.

8787 Georgia Avenue
Silver Spring, MD 20910-3760

Board Action

Roll Call	See minutes
Approval of Minutes: March 10, 2005, March 17, 2005, March 31, 2005	Approved as presented
Commissioners' Reports	None
Directors' Reports	None
Reconsideration Requests	None
Adoption of Opinions	None

GENERAL MEETING (*Third Floor Conference Room, 8787 Georgia Avenue, Silver Spring*)

- A. *Closed Session pursuant to Maryland State Government Code Annotated Section (10-508) (a) (8)
(Consult with counsel to obtain legal advice, potential litigation) (Subject: Clarksburg Town
Center)*

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: A.) Met in Closed Session. See open session report and State citation in the narrative minutes.

NOTE: The Board will make a decision on Items 1 and 2 before making a decision on Item 3. Speakers may combine their testimony for Items 1, 2 and 3 during their initial presentation. Speakers who testify about Item 3 during Items 1 and 2 may not sign up again for Item 3.

1. Reconsideration of failure to comply (building height)

With respect to Site Plan No. 8-98001 (Phase I) and Amendments, and Site Plan No. 8-02014 (Phase II) and Amendments, Clarksburg Town Center, RMX-2 zone; located at the northeast quadrant of the intersection of Stringtown Road and Frederick Road (MD 355); Clarksburg

Staff Recommendation: Finding of violations

BOARD ACTION

Motion: (1) PERDUE/BRYANT
(2) ROBINSON/WELLINGTON
(4) PERDUE/BRYANT
(5) PERDUE/ROBINSON

Vote:

Yea: (1) 5-0 as to all motions

Nay:

Other:

Action: (1) Found that all residential buildings in excess of 45 feet in height are in violation of a Planning Board action.

(2) Found that residential buildings designated on the signature set data table to be built to a maximum height of 35 feet that exceed 35 feet are in violation of a Planning Board action.

(3) See Item 2 for Board action on setbacks.

(4) Agreed to grandfather only with respect to height and setbacks those residential units that are either built or unbuilt but under contract before July 7, 2005.

(5) Confirmed that all residential units that are unbuilt and on which there is no contract will be subject to the 35 foot and 45 foot height limits and 10-foot setback, with the understanding that a plan amendment may be submitted for review and Board action.

For additional details, see the verbatim transcript on file with the minutes in the Montgomery Regional Office in Silver Spring, Maryland.

2. Threshold Hearing: Failure to Comply (building setback)

With respect to Site Plan No. 8-98001 (Phase I) and Amendments, and Site Plan No. 8-02014 (Phase II) and Amendments, Clarksburg Town Center, RMX-2 zone; located at the northeast quadrant of the intersection of Stringtown Road and Frederick Road (MD 355); Clarksburg

Staff Recommendation: Finding of violations

BOARD ACTION

Motion: WELLINGTON/ROBINSON

Vote:

Yea: 5-0

Nay:

Other:

Action: Found that structures built with a front setback of less than 10 feet constitute a site plan violation.

Also see Item 1 for additional related actions.

At this time, the Board continued to Item 3.

For additional details, see the verbatim transcript on file with the minutes in the Montgomery Regional Office in Silver Spring, Maryland.

3. Enforcement and Plan of Compliance Hearing

(In the event that violations are found in either 1 or 2 above) with respect to Site Plan No. 8-98001 (Phase I) and Amendments, and Site Plan No. 8-02014 (Phase II) and Amendments, Clarksburg Town Center, RMX-2 zone; located at the northeast quadrant of the intersection of Stringtown Road and Frederick Road (MD 355); Clarksburg

Staff Recommendation: Issue citation with fines; adopt plan of compliance

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: Agreed by unanimous consent to defer action on the staff recommendation to issue citations and approve a Plan of Compliance; agreed to recess to July 28 to allow staff time to collect and present explicit information on the height and building location/setback violations.

Noted corrections to building numbers in the staff recommendation in the technical report.

4. **Preliminary Plan No. 1-05091 Post Subdivision (Child Lot)**

RC Zone; 7.29 acres; 2 lots requested; 2 one-family detached dwelling units

Private well and septic

Located on the west side of Berryville Road, approximately 300 feet south of the intersection with Poplar Hill Road

Applicant: Thomas Post

Engineer: Dewberry and Davis

Planning Area: Potomac

Staff recommendation: Approval with conditions

BOARD ACTION

Motion: BRYANT/ROBINSON

Vote:

Yea: 4-0-1

Nay:

Other: WELLINGTON ABSTAINED

Action: Approved staff recommendation for approval subject to conditions as revised and as stated in the attached Board opinion.

Development Review staff presented the plan, as detailed in the staff report, and distributed a revised list of conditions of approval.

Mr. Jim Crawford, the engineer, and Ms. Jennifer Suess, the applicant, concurred in the staff recommendation.

5. Preliminary Plan No. 1-05102 Kakar Property w/site plan #8-05039

RE-2/TDR Zone; 1.31 acres; 2 lots requested; 2 one-family detached residential units

Community water and community sewer

Located on the southwest side of Bailey's Lane approximately 370 feet southeast of the intersection with Norbeck Road (MD 28)

Applicant: Nasirul Islam

Engineer: Dewberry and Davis

Attorney: Dufour and Orens

Planning Area: Aspen Hill

Staff recommendation: Approval with conditions

***** See Staff Memorandum for Discussion *****

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval subject to conditions as stated in the attached Board opinion.

Items 5 and 6 were discussed together, as reported below, as the concurrent review of the preliminary plan and site plan for the same property.

Development Review staff presented the preliminary plan and site plan for two lots for two single-family detached units, as detailed in the staff report. Staff distributed a revised list of conditions for the site plan.

Ms. Kinley Dumas, attorney representing the applicant, introduced Mr. Jim Crawford and Mr. Rob Gilroy and concurred in the staff recommendation for the preliminary plan and site plan.

6. **Site Plan Review No. 8-05039 - Kakar Property:** RE-2/TDR Zone; 1.31 acres; 2 lots requested; 2 single-family detached dwelling units; located on the southwest side of Bailey's Lane approximately 370 feet southeast of Norbeck Road; Aspen Hill

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion: WELLINGTON/BRYANT

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation for approval subject to conditions as revised and as stated in the attached Board opinion.

Items 5 and 6 were discussed together, as reported under Item 5, as the concurrent review of the preliminary plan and site plan for the same property.

(POSTPONED)

7. Preliminary Plan No. 1-02032A Jones Property (Amendment to conditions)

RDT Zone; 250.10 acres; 1 additional lot requested, 9 previously approved

Private well and private septic

Located on the north side of Brink Road approximately 2,150 feet west of Laytonsville Road (MD 108)

Applicant: Elm Street Development

Engineer: Charles P. Johnson and Associates

Planning Area: Agricultural and Rural Open Space

Staff recommendation: Approval with conditions

******* See Staff Memorandum for Discussion *******

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: This Item Was Postponed.

8. Record Plats

The following record plats are recommended for APPROVAL, subject to the appropriate conditions of approval of the preliminary plans and site plans if applicable, and conditioned on conformance with all requirements of Chapter 50 of the Montgomery County Code.

2-05239 Oakridge Estates

West side of Clarksburg Road (MD 121), opposite Ascot Square Ct
RE-2 Zone, 2 Lots
Community Water, Community Sewer
Planning Area: Clarksburg & Vicinity
Andrew & Norma Lopatin, Applicant

2-05241

Willerburn Acres
North side of Mary Cassatt Drive, approximately 900' east of Seven Locks Road
R-90 Zone, 2 Lots
Community Water, Community Sewer
Planning Area: Potomac
Michael Jakobowski, Applicant

2-05242

Chevy Chase
East side of Brookville Road, across from Underwood Street
R-60 Zone, 2 Lots
Community Water, Community Sewer
Planning Area: Bethesda- Chevy Chase
Mr. & Mrs. Thomas E. Conley, Applicant

Staff Recommendation:

Pursuant to section 50-35A, the following minor subdivision plat is recommended for approval subject to any applicable conditions of previous preliminary plans approvals and conditioned on conformance with all requirements of Chapter 50 of the Montgomery County Code.

2-05240

Woodhaven
Northwest corner of Thoreau Drive and Whittier Blvd
R-90 Zone, 2 Lots
Community Water, Community Sewer
Planning Area: Bethesda Chevy Chase
Surinder K. Arora, Applicant

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8. Record Plats (continued)

BOARD ACTION

Motion: **ROBINSON/BRYANT**

Vote:

Yea: **5-0**

Nay:

Other:

Action: **Approved staff recommendation as stated above.**

9. Forest Conservation Plan for Facility Plan for Renovation of Takoma Piney Branch Local Park

Staff Recommendation: Approval with conditions

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: **This Item was withdrawn from the Agenda.**

10. Facility Plan for Renovation of Takoma Piney Branch Local Park

Staff Recommendation: Approve facility plan and cost estimate, preliminary forest conservation plan, and determine schedule for design and construction during review of the FY 07-12 CIP

BOARD ACTION

Motion:

Vote:

Yea:

Nay:

Other:

Action: **This Item was withdrawn from the Agenda.**

11. Board of Appeals No. S-2641

Special exception request by the Rock Creek Day-Care Club, Inc., and the Rock Creek Council, No. 2797 Knights of Columbus, applicant, requests a special exception to permit parking of motor vehicles, off-street in connection with commercial uses; R-60 Zone; located at 5417 West Cedar Lane, Bethesda

Staff Recommendation: Approval

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation, as stated in the attached letter of transmittal to the Board of Appeals.

Items 11 and 12 were discussed together, as reported below, as a petition for an amendment to an existing special exception and a petition for a new special exception use for the same property.

Following brief comments by Development Review staff, Mr. Mark Viani, attorney representing the applicant, concurred in the staff recommendation.

12. **Board of Appeals No. CBA-143-A:** Special exception modification to an existing private club and service organization; R-60 Zone; located at 5417 West Cedar Lane, Bethesda

Staff Recommendation: Approval

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:

Yea: 5-0

Nay:

Other:

Action: Approved staff recommendation, as stated in the attached letter of transmittal to the Board of Appeals.

Items 11 and 12 were discussed together, as reported under Item 11, as a petition for an amendment to an existing special exception and a petition for a new special exception use for the same property.

13. Planning Board Worksession and Action - Draft Amendment to Master Plan of Historic Preservation: COMSAT Laboratories, 22300 Comsat Drive, Clarksburg

Staff Recommendation: Designate on Master Plan

(No public testimony will be taken at this time, although persons in the audience may be asked to respond to questions.)

BOARD ACTION

Motion: BRYANT/PERDUE

Vote:

Yea: 4-1

Nay: WELLINGTON OPPOSED

Other:

Action: Contrary to the staff recommendation, rejected the proposal for historic designation.

Prior to beginning the worksession, Chairman Berlage stated for the record that, although he had not attended the public hearing on the Public Hearing Draft master plan amendment, he has listened to the audiotapes of the hearing and familiarized himself with the entire record.

Countywide Planning Division Historic Preservation staff presented an overview of the public hearing testimony and the Historic Preservation Commission (HPC) and staff recommendation to designate the COMSAT Laboratories building in Clarksburg on the *Master Plan for Historic Preservation* with an environmental setting of 33.47 acres, as detailed in the staff report. In support of designation, staff cited Historic Preservation criteria 1a, 1d, 2a, 2b, 2c, and 2e. Staff discussed the significance of the building and the architect, Cesar Pelli, and the reasons the building was not previously identified for preservation.

Community-Based Planning staff offered illustrative drawings to demonstrate that a significant amount of development can occur on the property, some 4 million square feet of commercial development as envisioned in the master plan, in conjunction with historic preservation of the building and environmental setting. Staff discussed various issues related to the property, including the recommendations in the master plan, various development scenarios, parking, stormwater management, forest conservation, and open space.

Mr. Steve Elmendorf, attorney representing the property owner, offered comments about difficulties in achieving the master plan density if the building is designated as a historic resource.

There followed considerable Board discussion and comment. Chairman Berlage raised concerns about the designation process in view of the fact that the building was not identified in the context of the Clarksburg Master Plan amendment 11 years ago. Several commissioners raised concern about achieving the master plan buildout of the area if the building and environmental setting are designated for historic preservation.

Commissioner Wellington spoke in support of designation, noting that creative development and historic preservation have worked together in other parts of the County.

14. Local Map Amendment No. G-834

Porten Companies, Inc., applicant, requests reclassification of 5.28 acres of land from the R-200/TDR Zone to the RT-8 Zone for 39 town house units; located at 12024 Darnestown Road, Gaithersburg Potomac Subregion Master Plan

Staff Recommendation: Approval

BOARD ACTION

Motion: (1) WELLINGTON/
(2) PERDUE/BRYANT

Vote:

Yea: (2) 3-2

Nay: (2) BERLAGE, WELLINGTON OPPOSED

Other:

Action: (1) To deny, contrary to the staff recommendation.
(FAILED FOR LACK OF A SECOND)

(2) Approved the staff recommendation to approve subject to conditions, as stated in the attached letter of transmittal to the Board of Appeals.

Development Review staff presented the request to rezone property from the R-200/TDR Zone to the RT-8 Zone for development of up to 39 townhouse units, as detailed in the staff report. Staff also called the Board's attention to a distributed errata sheet and copies of correspondence that have been received since the staff report was completed.

Community-Based Planning staff discussed changes that have been made to the schematic development plan that increase compatibility with the surrounding community. Staff expressed the view that, as a result of the revisions, the proposed development will be more compatible with the nearest neighbor than the existing special exception Potomac Garden Nursery.

Ms. Barbara Sears, attorney representing the applicant, introduced Mr. Ray Sobrino of the applicant company, and Mr. Al Blumberg, the land planner. Ms. Sears discussed the proposed development, expressing the view that existing conditions will be greatly improved in terms of reduced imperviousness, reforestation, stream restoration, decreased traffic, and stormwater quality and quantity control.

Mr. David Gardner, attorney, and Mr. Malcolm Rivkin, planner, representing the Orchard Knolls Homeowners Association; and Mr. David Haas, Mr. Bryan Lee, Mr. David Gilles, and Ms. Lisa Goodman, adjacent property owners, offered testimony in opposition to the proposed rezoning and schematic development plan.

Ms. Sears and Mr. Blumberg responded to testimony, emphasizing the ways the property will be improved as a result of the proposed rezoning and development. Ms. Sears noted that the number of units is not binding, while the setbacks shown on the schematic development plan are binding as minimum setbacks. She proffered that the applicant will bring the proposal back to the Planning Board if there is any intent to reduce the setbacks.